

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

EDWARD PERGANDE, et al.,

Plaintiffs, 6:10-cv-6314-TC

v.

FINDINGS AND  
RECOMMENDATION

Sheriff John Trumbo,  
et al.,

Defendants.

COFFIN, Magistrate Judge.

Plaintiff filed a complaint under 42 U.S.C. § 1983 alleging that defendants violated his First Amendment rights by restricting him to using post cards for letter writing while he was a pre-trial detainee in the Umatilla County Jail.

Plaintiff now moves for partial summary judgment "as to the liability [of defendants] for damages for the post card only policy." Plaintiff's Motion for Summary Judgment (#113).

The only evidence in support of plaintiff's is a memorandum to "all staff" from "Darlene" dated June 18, 2012, stating in relevant part: "Beginning this week, the jail will be accepting letters for both incoming and outgoing mail." Plaintiff's Motion for partial summary judgment (#113-1).

Defendant's object to plaintiff's motion on several grounds. However, it is not necessary to address defendants' argument in detail. In short, plaintiff has not established that there are no genuine issues of material fact as to whether Umatilla County revised it's post-card only policy as a result of plaintiff filing this lawsuit.

Plaintiff's Motion for partial summary judgment (#113) should be denied.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determination of the Magistrate Judge will be considered as a

waiver of a party's right to *de novo* consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 23 day of January, 2013.

  
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Thomas M. Coffin  
United States Magistrate Judge